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COMMISSION ON HUMAN RIGHTS

Forty-sixth session

SUMMARY RECORD OF THE 48th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 2 March 1990, at 3 p.m.

Chairman: Mrs. QUISUMBING (Philippines)

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Consideration of draft resolutions submitted under items 23 and 10 of the agenda

Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-first session (continued)

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GE.90-11662/1840B

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS SUBMITTED UNDER THE FOLLOWING AGENDA ITEMS: IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF (agenda item 23) (E/CN.4/1990/L.34 and L.35)

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (agenda item 10) (E/CN.4/1990/L.38-L.46; E/CN.4/1990/2, draft resolutions III, IV and IX)

1. Mr. JOHNSON (United States of America) asked whether consideration of Sub-Commission resolution IX could be deferred to the meeting to be held the following Tuesday, as it had not been included in the order of the day.

2. Mr. RAVEN (United Kingdom) supported that proposal. He further proposed that, in the interests of uniform treatment, consideration of Sub-Commission draft resolutions IV and IX should be deferred to the same meeting; they had not been mentioned in the order of the day either.

3. It was so decided.

Draft resolution E/CN.4/1990/L.34

4. Ms. ANDREYCHUCK (Canada), introducing draft resolution E/CN.4/1990/L.34, of which Hungary and the United Kingdom had also become sponsors, said that despite the substantial work accomplished to date, intolerance and discrimination continued to abound. The draft resolution before the Commission was similar to the text of resolution 1989/44, which the Commission had adopted by consensus at its previous session. The only changes were in paragraphs 8, 10 and 11. In making those changes, the sponsors had wished to indicate their support and encouragement for the activities of non-governmental organizations which were fostering understanding and respect among different religious groups; to emphasize the usefulness of the working paper prepared by Mr. Theo van Boven, which contained an excellent analysis of efforts to promote religious tolerance; and, by proposing that the mandate of the Special Rapporteur appointed to examine incidents and governmental actions in all parts of the world should be extended, to highlight the need to ensure continued respect in all States for the right to freedom of thought, conscience, religion and belief. In that connection, the sponsors of the draft resolution had agreed that the mandate of the Special Rapporteur should be extended for two years instead of three. The first phrase of paragraph 11 of the draft resolution should therefore read: "11. Decides to extend for two years the mandate of the Special Rapporteur".

5. She expressed the hope that the draft resolution would be adopted by consensus.

6. The CHAIRMAN said that Peru and the United Kingdom had joined the sponsors of the draft resolution, the financial implications of which were set forth in document E/CN.4/1990/L.35. She invited the Commission to take a decision on draft resolution E/CN.4/1990/L.34.

7. Draft resolution E/CN.4/1990/L.34 was adopted without a vote.

8. The CHAIRMAN said that consideration of draft resolution E/CN.4/1990/L.38 would be deferred to the meeting to be held the following Tuesday.

Draft resolution E/CN.4/1990/L.39

9. Mr. DUHS (Sweden), introducing draft resolution E/CN.4/1990/L.39, said that Panama had become a sponsor. He drew the attention of the members of the Commission to operative paragraphs 6 and 7 and, after noting that the text was much the same as that which had been adopted at previous sessions of the Commission, expressed the hope that it would be adopted without a vote.

Draft resolution E/CN.4/1990/L.40

10. Mr. DUHS (Sweden) introducing draft resolution E/CN.4/1990/L.40, of which Argentina had become a sponsor, said that that text was also one which might be described as traditional. He drew the attention of the members of the Commission to operative paragraphs 2 and 3, and expressed the hope that the draft resolution could be adopted without a vote, like previous resolutions on the subject.

Draft resolution E/CN.4/1990/L.41

11. Ms. LE FRAPER (France), introducing draft resolution E/CN.4/1990/L.41, said that Czechoslovakia had become a sponsor. The sponsors were proposing once again that the Commission should extend the mandate of the Working Group on Enforced or Involuntary Disappearances; they again commended it for its work, and thanked those Governments which had agreed to co-operate with the Commission.

12. The draft resolution before the Commission was very similar to resolution 1989/27 which the Commission had adopted at its forty-fifth session. The sponsors had, however, added a new paragraph (operative paragraph 14), drawing the Commission's attention to the all too frequent links between states of emergency and disappearances, and in operative paragraph 9 emphasized the need for each country to conduct appropriate inquiries without delay, when allegations concerning disappearances came to the notice of the authorities. They had also considered that the Working Group should be reminded of the need to take into account the replies and comments of Governments, and had therefore introduced a provision to that effect in operative paragraph 6. She also expressed the sponsors' appreciation and encouragement of the Sub-Commission's sessional Working Group on Detention which had made remarkable progress in preparing a draft declaration on the question of enforced or involuntary disappearances.

13. She expressed the hope that draft resolution E/CN.4/1990/L.41 would be adopted by consensus.

Draft resolution E/CN.4/1990/L.42

14. Mr. CABRAL (Portugal), introducing draft resolution E/CN.4/1990/L.42, said that Panama had become a sponsor. The sponsors greatly appreciated the preliminary study submitted by Mrs. Bautista to the Sub-Commission and also welcomed the decision of that body to invite Mrs. Bautista to continue that study. The Commission had a special responsibility towards staff members of the United Nations and its specialized agencies not only for humanitarian reasons, but also because part of its work was based on information obtained in loco by working groups, special rapporteurs and experts, and because the objectivity and thoroughness of the reports submitted to it were incompatible with any type of pressure.

15. The draft resolution before the Commission closely followed the one adopted at its previous session, and he hoped that it would be adopted without a vote.

Draft resolution E/CN.4/1990/L.43

16. Ms. ANDREYCHUCK (Canada), introducing draft resolution E/CN.4/1990/L.43, of which Hungary, Panama and Peru had become sponsors, said that the text was similar in many ways to the resolution adopted by consensus at the previous session of the Commission. However, a number of important changes had been introduced to take account of developments.

17. One of the most important events since the previous session of the Commission had been the publication of a working paper on the right to freedom of opinion and expression (E/CN.4/Sub.2/1989/26), prepared by Mr. Türk at the request of the Sub-Commission. The draft resolution on the right to freedom of opinion and expression reflected some of the important conclusions of that document, in particular those concerning the intrinsic link between the various human rights. However, on the proposal of the Chinese delegation, she wished to introduce an oral amendment to make the seventh preambular paragraph more precise, with the beginning being worded to read: "Noting the views expressed by Mr. Türk in his working paper, including those on the intrinsic link, etc.". She expressed the hope that the draft text would be adopted by consensus, and the view that it suitably replaced Sub-Commission draft resolution IV.

18. The CHAIRMAN announced out that the Ukrainian Soviet Socialist Republic and Togo had become sponsors of the draft resolution.

Draft resolution E/CN.4/1990/L.44

19. Mr. RIETJENS (Belgium), introducing draft resolution E/CN.4/1990/L.44, recalled that the previous year the Commission had requested the Sub-Commission to consider effective means of monitoring the implementation of the Basic Principles on the Independence of the Judiciary and the protection of practising lawyers, and that the Sub-Commission had acted on that request by inviting one of its members, Mr. Joinet, to prepare a working paper on means in the area of monitoring by which it might assist in ensuring respect for the independence of the judiciary and the protection of practising lawyers. Furthermore, in its resolution 1989/32, the Commission had decided that the study and draft declaration on the independence and impartiality of

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the judiciary and the independence of lawyers would be transmitted to the Committee on Crime Prevention and Control and also to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in August 1990, in order that they should be taken into account in the completion of standard-setting activities in that area.

20. Together with other sponsors, his delegation hoped that the Commission would adopt the draft resolution without a vote.

Draft resolution E/CN.4/1990/L.45

21. Mr. RIETJENS (Belgium), introducing draft resolution E/CN.4/1990/L.45 on behalf of its sponsors, which had been joined by Costa Rica, Panama and the Union of Soviet Socialist Republics, said that, like resolution 1989/33, on which it was broadly based, it was intended to encourage the international community to redouble its efforts to prevent torture. As stated in the twelfth preambular paragraph, States could, to that end, request technical assistance within the framework of human rights.

22. The sponsors requested the Commission to extend the mandate of the Special Rapporteur by two years, as the usefulness of his mission was borne out by the increasing number of countries co-operating closely with him. That measure would also make for better planning in apportioning the financial and personnel resources of the Centre for Human Rights.

23. In operative paragraph 3, the sponsors emphasized the importance of instituting on a regional level or worldwide a system of periodic visits by independent experts to places of detention.

24. Lastly, the sponsors underlined the need to strengthen co-operation between the Special Rapporteur and the Committee against Torture to prevent their activities from overlapping. It had therefore been decided to add the following phrase to operative paragraph 15: "in particular to determine methods of co-operation and avoid any overlapping in the activities of the United Nations in its struggle to eliminate torture".

25. The CHAIRMAN invited the members of the Commission to take decisions on the draft resolutions which had just been introduced.

26. Draft resolutions E/CN.4/1990/L.39, L.40, L.41, L.42, L.43, as orally amended, L.44 and L.45 as orally amended, together with Sub-Commission draft resolution III, appearing in chapter I.A of document E/CN.4/1990/2, were adopted without a vote.

27. The CHAIRMAN said that draft resolution E/CN.4/1990/L.43 cancelled and superseded Sub-Commission draft resolution IV. She invited Mr. Nyamekye, Deputy Director of the Centre for Human Rights, to make a statement on the financial implications of draft resolution E/CN.4/1990/L.41.

28. Mr. NYAMEKYE (Deputy Director, Centre for Human Rights) read out document E/CN.4/1990/L.76 on the financial implications of draft resolution E/CN.4/1990/L.41. The estimated cost of the work programme of the Working Group on Enforced or Involuntary Disappearances was $US 224,200 for 1990, $US 224,500 for 1991 and $US 59,300 for 1992. That expenditure

would come under section 23 of the budget (Human rights). The related conference-servicing costs, calculated on a full-cost basis, were estimated at $US 195,700 for 1990 and $US 201,100 for 1991. In addition, should the services of an interpreter be required during the field missions, salary, travel and subsistence costs would be $US 5,000 for each mission, to be financed under section 29 B (Conference Services Division, Geneva).

29. Mr. TAUCHI (Japan) explaining his delegation's position on draft resolution E/CN.4/1990/L.42, which had just been adopted, said that the difference between the human rights of staff members and their privileges and immunities was not clearly defined in the draft, particularly in the second preambular paragraph. As far as privileges and immunities were concerned, the words "United Nations staff members, experts and their families" should be replaced by "United Nations staff members, their families and experts", as used in the Convention on the Privileges and Immunities of the United Nations and the Conventtion on the Privileges and Immunities of the Specialized Agencies.

30. With regard to operative paragraph 4 of draft resolution E/CN.4/1990/L.44, also just adopted, in which the Commission requested the Sub-Commission to recommend to it any initiatives which could be taken to implement the Basic Principles on the Independence of the Judiciary, he was afraid that by taking such initiatives, the Commission would impinge on the work of the competent committee which should have primary responsibility for the implementation of those principles.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-FIRST SESSION (agenda item 19) (continued) (E/CN.4/1990/2-E/CN.4/Sub.2/1989/58; E/CN.4/1990/40, 56, 75 and 82; E/CN.4/1990/NGO/6; E/CN.4/Sub.2/1989/26, 36, 37 and 39)

31. Mrs. EKONG (Nigeria) said that her delegation attached great importance to the work of the Sub-Commission, whose report contained 47 resolutions and 13 decisions on issues of vital importance in promoting respect for fundamental freedoms and human rights. The Sub-Commission at its forty-first session had examined the traditional issues on its agenda and had also tackled new issues, such as the movement and dumping of toxic and dangerous products and waste, which was a matter of concern to many developing countries, in particular African countries. Her delegation therefore noted with satisfaction the unanimous adoption of a resolution by the Sub-Commission which called on all parties involved to find an acceptable solution to the problem. Her delegation was also happy to note that the Sub-Commission had decided to keep that issue under review.

32. As already stated in the course of the discussion on agenda items 7 and 8, her delegation considered that there was a strong connection between development and human rights. The fact that the promotion, protection and defence of fundamental rights had been and still were impaired by the problems of hunger, extreme poverty, illiteracy, external indebtedness and an inequitable international economic order could not be ignored. The Sub-Commission was indeed the appropriate forum for the consideration of the adverse effects of those problems on human rights. Her delegation welcomed its decision to consider the item on the international economic order every year instead of every other year.

33. With regard to the Sub-Commission's decision to suspend rule 59 of its rules of procedure in order to allow decisions under Economic and Social Council resolution 1503 (XVIII) and item 6 of its agenda to be taken by secret ballot, her delegation considered that the Sub-Commission should do everything possible to protect the independence and integrity of its members, but should nevertheless exercise care to prevent any abuse of its rules of procedure.

34. Her delegation welcomed the efforts made by the Working Group on Indigenous Populations to prepare the draft universal declaration on indigenous rights. In that connection, it welcomed the creation of the United Nations Voluntary Fund for Indigenous Populations and noted with satisfaction the generous contributions from many Western countries which had facilitated the participation of a significant number of representatives of indigenous peoples in the seventh session of the Working Group.

35. Her delegation wished to call on the Sub-Commission to allot more time to the question of traditional practices affecting the health of women and children, and to suggest far-reaching recommendations on how such practices might be eliminated. It supported the draft decision taken in that connection and in particular the recommendation on the holding of international regional seminars on the subject in Asia and Africa. The Commission should also consider including that item on its own agenda.

36. Her delegation commended the Sub-Commission on the progress it had made during the forty-first session. It also noted with deep satisfaction the sincere efforts of many observer delegations which had actively participated in that session and which had always been ready to clarify or give more information on matters relating to their countries. The important role of the non-governmental organizations, too, could not be overlooked, since human rights violations in States could not be monitored effectively and consistently without their efforts.

37. In conclusion, her delegation expressed the hope that the new members of the Sub-Commission shortly to be elected would maintain the efforts of their predecessors and that the Commission would decide to extend the term of those who had served only two years. Her delegation for its part would continue to support the work of the Sub-Commission in every way possible.

38. It would address the important issue of the agenda overload of the Sub-Commission under item 11.

39. Mr. SREENIVASAN (India) said that the Commission should give clear and specific guidelines to the Sub-Commission to enable it to carry out its mandate in harmony with the established goals. Being composed of independent experts reflecting the geographic and ideological balance represented in the Commission, the Sub-Commission was well placed to provide the type of contribution which the Commission required.

40. His delegation shared the concern expressed by other delegations that the Sub-Commission should rationalize its agenda and exercise restraint in expanding its area of activity. However, its contribution was a very valuable one, as its mandate went beyond that of an investigating body whose duty was to collect information. It also had to transmit definite recommendations to the Commission both on thematic issues and on specific human rights

violations. His delegation also wished to stress that the Sub-Commission should always be composed of independent experts and that it should avoid over-politicizing its debates.

41. The studies and reports of the Sub-Commission should have both utility and originality, and in that connection it was to be commended for, inter alia, the work of the Working Group on Indigenous Populations in preparing new standards in the area of protection and promotion of the rights of those populations, the study on the independence and impartiality of the judiciary and the annual report on states of emergency.

42. His delegation also paid tribute to the outgoing Sub-Commission experts who had worked with dedication and sincerity in promoting the cause of human rights and it was confident that their successors would continue their high traditions. It also hoped that in the process of their election, a new synthesis of ideas, methods of work and network of relationships would evolve as a result of the ongoing debate in the Commission as well as in the Sub-Commission itself.

43. In conclusion, his delegation pointed out that the forty-first session of the Sub-Commission had clearly demonstrated that a great deal of success could be achieved through dialogue, co-operation and a sense of purpose. It was confident that the Sub-Commission would adjust its working methods to emerging requirements, which had been highlighted during the debate in the Commission.

44. Mr. ZODIATES (Cyprus) said that the consideration of the Sub-Commission's report provided an opportunity not only to evaluate the achievements of its previous session but also, more importantly, to reflect on its role within the overall United Nations efforts to promote and protect human rights and fundamental freedoms. As a body of experts, the Sub-Commission was expected to make an outstanding contribution to the study of human rights issues not only from an academic point of view but also, and principally, from the standpoint of the practical application of those rights which affected different aspects of the lives of individuals and of States.

45. The studies and reports presented by the Sub-Commission always attracted wide interest, but they also came in for criticism on account of the priority given to one issue or another. Generally speaking it proved that an overall rationalization of the work of the Sub-Commission was needed. However, those studies and reports had substantially contributed to solving a number of practical problems in the field of human rights, and had also contributed to a better understanding of the scope of human rights standards. There was still a good deal to be done, however. New areas of concern might arise and new standards might be deemed necessary to keep pace with advances in science and technology. The expansion of the Sub-Commission's activities into new fields was warranted by developments in the modern world, and all its members should continue to meet that challenge.

46. The critical remarks made about the Sub-Commission were essentially focused on the politicization of its work and the fact that it was becoming a forum for issues which would normally be discussed by Government representatives rather than by independent experts. It should be borne in mind, however, that the Sub-Commission was also charged with the monitoring of human rights violations throughout the world, and since human rights were

increasingly being regarded as a matter of legitimate international concern, the task of the Sub-Commission in that area acquired added importance. Thus, a degree of politicization in its discussions and in its work was unavoidable. Independence, impartiality, objectivity, integrity, courage and self-respect were among the qualities which would normally be expected of an independent expert acting in his personal capacity, in any field. However, those qualities were even more important when it came to human rights experts, because they were concerned with very sensitive issues and issues which were inextricably linked to a number of political, economic and social factors affecting the lives of individuals and of States. It was imperative, therefore, that all States should safeguard the independence of experts and avoid any action which might compromise their impartiality and objectivity, and that they should preserve their integrity and encourage them to express their opinions freely. Such responsibility was of course greater for those States and Governments which had nominated the experts members of the Sub-Commission.

47. His delegation warmly commended Mrs. Erica-Irène Daes for her efforts to promote the rights of the weak and vulnerable. Her devotion and experience, coupled with her idealism and vigour, guaranteed that the task entrusted to her would be crowned with success. His delegation also congratulated Mr. Yimer on his efficient conduct of the work of the forty-first session of the Sub-Commission and on his excellent introduction of the report on that session.

48. Mr. SHEPPARD (Observer for Australia) stressed the importance which his delegation attached to the preparation of a draft declaration on indigenous peoples' rights. Australia recognized that measures were still required to overcome the vestiges of discrimination in his country against the aboriginal and Torres Strait Islander people. However, arrangements were to be made for consultations between those people and the Australian Government: an interim commission would be starting its work on 5 March 1990, and regional council elections would be held within eight months. The commission would consist of 17 representatives elected by regional councils, plus 3 ministerial appointees, and it would be in place by 5 March 1991 at the latest. Its objective would be to ensure maximum participation of aboriginal and Torres Strait Islander people in forming and implementing policies that affected them and their economic, social and cultural development, and co-ordinating federal and State policies relating to them.

49. The Australian Government had also introduced health, employment and education strategies for the aboriginal and Torres Strait Islander people. The Royal Commission into aboriginal deaths in custody had made recommendations in an interim report on custodial practices, sentencing procedures, the training of police and prison officers, medical issues, and post-death investigations. Most of those recommendations had already been implemented by the Australian States.

50. The previous year the Australian Government had submitted a full response to the Secretary-General's request for comments on the principles to be contained in a draft declaration on indigenous peoples' rights. While the Government's approach had been constructive, it had not been able to accept all the proposals made to the Sub-Commission's Working Group on Indigenous Populations in the area of land rights and self-determination. In addition, it was disappointed that the Working Group had not taken full advantage of its

comments and those of other Governments and non-governmental organizations; nevertheless, it supported the idea of an extended session of the Working Group in 1990 on a trial basis. The procedural problems should be addressed early and effectively at that session. The Working Group on Indigenous Populations, at its pre-sessional meeting, should take into account the revised ILO Convention on Indigenous and Tribal Peoples, adopted in 1989.

51. Mr. PETERS (Observer for the Netherlands) said that the report by the Chairman of the Sub-Commission (E/CN.4/1990/40) had yielded some excellent texts but at the same time reflected some trends which caused concern. The Sub-Commission's workload had increased considerably: it was producing more resolutions and more reports and using more conference facilities. A trivial but eloquent sign of that state of affairs was that the Sub-Commission had had to adopt its report through written communications after its latest session. The Commission had voiced its concern about the Sub-Commission's workload on several occasions, most recently in resolution 1989/36.

52. The report by Mr. Yimer, Chairman of the Sub-Commission, reflected the discussion on that subject, stating that the Sub-Commission was very much aware of its complementary role in relation to the Commission and to other human rights bodies. It should indeed concentrate its attention on the issues on which it could make a distinctive contribution. In that connection he welcomed the establishment of a sessional working group to make an inventory of ways of dealing with violations of human rights.

53. A further cause for concern was that in the studies made for the Sub-Commission, the guidelines laid down in Commission resolution 1989/36 had not always been followed. In some cases the debate on completed studies was not yet over and there was some overlap with new studies. Excellent reports had been examined too quickly. The working papers "without financial implications" would certainly burden the agenda for the next session of the Sub-Commission; furthermore, his delegation did not approve of some of the subjects chosen. In particular, it considered it unwise for the Sub-Commission to concern itself with such matters as the environment or international peace and security, which came within the purview of other bodies. However, the Sub-Commission had decided to rationalize proposals for studies at its next session. To foster co-operation with the Commission, the latter might invite Sub-Commission experts to attend its debates.

54. The Sub-Commission had a particularly important role to play with regard to the procedure set forth in Economic and Social Council resolution 1503 (XLVIII) by identifying situations qualifying for transmission to the Commission. On the present occasion there were very few new cases - only five. His delegation wondered how there could be so few, given that the Secretariat had received 200,000 complaints in 1988 and 300,000 in 1989. In that connection, he emphasized that the Secretariat unit which dealt with those complaints was severely understaffed. However, its task would be eased by the introduction of the computerization system referred to in draft resolution E/CN.4/1990/L.30 which had just been adopted.

55. Was it to be assumed that all the situations referred to in those numerous communications had drastically improved, or that Government representatives had been able to refute all allegations? In that connection, the five-month period which Sub-Commission decision 1989/102 allowed States to reply to communications was too long.

56. Turning to the country situations drawn to the Commission's attention by the Sub-Commission, the attitude of representatives of China who, according to an article in the Netherlands Quarterly of Human Rights (vol. 7, 1989) had deployed a great deal of political pressure to prevent the Sub-Commission from passing a resolution on the subject, caused him some concern. His own Government strongly disapproved of that type of pressure and had refused to put such pressure on the Netherlands expert; he expressed the hope that other Governments would do likewise. With regard to Iraq, many Sub-Commission experts had voted for a no-action motion on account of an invitation from an Iraqi non-governmental organization (see document E/CN.4/1989/SR.37). Members of the Sub-Commission intending to accept that invitation should travel as experts, and not merely as individuals. The Iraqi Government should therefore make appropriate arrangements directly with the Sub-Commission. The Netherlands delegation was pleased to see that Mr. Mazilu, the Romanian expert, was again free to travel and it looked forward to the presentation of an updated version of his report. In that connection, it should be noted that the advisory opinion of the International Court of Justice concerning Mr. Mazilu had shed some light on the status of experts on mission.

57. Turning to thematic issues, he observed that the previous year the Working Group on Contemporary Forms of Slavery had proposed a programme of action for the prevention of the sale of children, child prostitution and child pornography, as well as the appointment of a Special Rapporteur on those issues. The Commission had before it (see document E/CN.4/1990/2, pp. 12 and 13) two draft resolutions which the Sub-Commission had adopted (XII and XIII). In spite of the financial implications, his delegation was in favour of appointing a Special Rapporteur. The Working Group had also discussed the Secretary-General's study on ways and means for establishing an effective mechanism for the implementation of the Slavery Conventions (E/CN.4/Sub.2/1989/37). The Netherlands delegation urged the Sub-Commission to prepare recommendations on that issue at its next session. It had prepared a draft resolution in the light of Commission resolution 1989/35, and expressed the hope that it would be adopted by consensus.

58. The Netherlands Government welcomed the preliminary report by Mr. Türk on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1989/19). It agreed that hierarchization of human rights was outdated, and that a unified approach should be sought in respect of the two major categories. The Netherlands delegation would take an active part in the debate on economic, social and cultural rights and endorsed the proposal of the Special Rapporteur to allocate them a separate agenda item in the future.

59. With regard to Mr. Eide's excellent study on measures to combat racism and racial discrimination (E/CN.4/Sub.2/1989/8 and Add.1), he emphasized that racism was a concept which had to be formulated precisely. He welcomed the recommendation to draft a plan for concerted action to implement the measures which had been recommended within the framework of the two decades. He stressed the need for effective recourse measures for victims of racial discrimination in all countries. In that connection, his delegation looked forward to a study which the Sub-Commission had planned on compensation and rehabilitation for victims of human rights violations.

60. Lastly, he expressed appreciation for the practice of circulating the curriculum vitae of candidates for the Sub-Commission, which, inter alia, facilitated assessment of their independence as experts. Guidelines to enable

the Sub-Commission in its new composition to continue to fulfil its important mandate were contained in a draft resolution which his delegation had co-sponsored and which it hoped would be adopted without a vote.

61. Mr. SCHERK (Observer for Austria) said that there was unanimity within the Commission that the activities of the Sub-Commission should complement rather than duplicate its own. His delegation held the view that the Sub-Commission should carry out those tasks which could better be dealt with by independent experts than by Government representatives: studies and reports, the drafting of human rights standards, and the first two stages of the "1503 procedure". With regard to the latter, his delegation emphasized that a five-month period for Government replies to communications was inappropriate: the period should depend, rather, on the nature of the issues concerned. The Sub-Commission should therefore reconsider its decision in that regard.

62. As the Sub-Commission was composed of independent experts, any attempt to put pressure on any of its members should be energetically repudiated. Austria therefore welcomed the recent advisory opinion by the International Court of Justice in the Mazilu case, which had removed all doubts concerning the immunity of the members and experts of the Sub-Commission under the Convention on the Privileges and Immunities of the United Nations. In that context, it also emphasized the importance it attached to action to protect staff members of the United Nations and its specialized agencies, some of whom were being held in detention under various pretexts, often without a fair trial or indeed any trial at all. Furthermore, hostage-taking was particularly reprehensible when it concerned the staff of international or humanitarian agencies.

63. His delegation would follow with interest any suggestions made within the working group set up to rationalize the activities of the Sub-Commission. In that regard, the Commission's resolutions on the work of the Sub-Commission merited particular attention. For example, the Sub-Commission should review its practice as far as the forwarding of studies, reports and draft resolutions or decisions to the Commission was concerned. In that connection, the report by Mr. Yimer (E/CN.4/1990/40) should serve to improve the dialogue between the two bodies.

64. Turning to the issues discussed by the Sub-Commission at its previous session, he remarked that the study on the right to freedom of opinion and expression undertaken by Mr. Joinet and Mr. Türk (E/CN.4/Sub.2/1989/26) was of particular interest. In that connection, his delegation supported any legislative improvements to the status of the press. With regard to the administration of justice and the human rights of detainees, his delegation would have preferred to see Mr. Joinet's report discussed at the previous session of the Sub-Commission. It was to be hoped that not too much time would be lost by postponing consideration of that important issue. His delegation considered that the Sub-Commission could also play a particularly useful role in preparing model texts for national legislative measures in the administration of justice. On the question of states of emergency, his delegation favoured closer scrutiny of the measures taken and of the situations themselves, and also favoured the idea of a more institutionalized form of supervision and of limiting governmental discretion. It also considered that the Sub-Commission was making a valuable contribution to the

solution of the problems of unacknowledged detention and enforced or involuntary disappearances, in particular by its proposals for practical measures (such as a central register of places of detention and of detainees).

65. The Working Group on Slavery under the chairmanship of Mr. Asbjørn Eide had commendably decided to divide up its work according to the specific topics which changed from year to year. At its previous session, the topic had been the sale of children, child prostitution and child pornography. Such abuses were already covered by the Convention on the Rights of the Child, but their causes and remedies required closer study, although a revision of the Convention would be inappropriate at the present time. Finally, referring to the activities of the Sub-Commission with regard to indigenous populations, he said that there was a need for a declaration on the rights of those peoples.

66. Mr. AL SENTURIAS (World Council of Churches) said that indigenous people and their land rights had been a priority issue for the World Council of Churches since 1971. In order to provide an opportunity for indigenous people to present their case to the international religious community, the Council had convened a meeting on land rights in Darwin, Australia, which had been attended by 125 indigenous peoples from all over the world, and also by Mrs. Daes, Chairman/Rapporteur of the Working Group on Indigenous Populations.

67. The participants in that meeting had adopted the Darwin Declaration, which was reproduced in annex III to the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1989/36). The Declaration recognized that the critical issue facing indigenous persons today was survival. The World Council of Churches had been called upon to make representations on behalf of indigenous people to the Commission on Human Rights and other United Nations bodies responsible for addressing those issues. It was in that capacity, therefore, that it called upon the Commission to recognize the treaties between indigenous people and the colonial States.

68. He also reiterated the requests made in the Darwin Declaration with a view to the adoption of specific measures in respect of Australia, New Zealand (Aotearoa), Canada, East Timor, Hawaii, Guam, the South Pacific and South America (see document E/CN.4/Sub.2/1989/36, pp. 37-39).

69. The Darwin Declaration also called upon the international community to support the commemoration by the indigenous people of New Zealand of the one hundred and fiftieth anniversary of the Treaty of Waitangi by demonstrating its support for the Maori people, and to recommend that 1992 should be declared the Year of the Indigenous. A global commemoration of the 500 years of genocide and repression against indigenous peoples might also be organized. The indigenous participants in the Darwin meeting felt that attention to those issues by the Commission would be the beginning of a response to the serious crisis threatening indigenous people the world over.

70. That state of emergency was clearly illustrated by the fate of the indigenous people of Brazil, whose very survival was threatened by the invasion of gold prospectors. The World Council of Churches had already drawn the attention of the international community to the numerous cases of deaths in prison of Australian aborigines and the gross violations of the rights of the indigenous peoples of Peru and Guatemala. The Council called upon the

Commission on Human Rights to petition United Nations Member States to recognize indigenous nations and their land claims, which were at the foundation of many human rights issues.

71. The World Council of Churches brought those concerns to the Commission's attention because, having closely monitored the situation of indigenous people throughout the world, it was now very well informed about their problems. The Commission had a duty to help right past wrongs and to support the call for justice and peace.

72. Mr. GRAVES (International Commission of Health Professionals for Health and Human Rights), speaking also on behalf of War Amputations of Canada, drew the Commission's attention to Sub-Commission draft resolution III (Compensation for victims of gross violations of human rights), which called for a study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights.

73. The International Commission of Health Professionals and War Amputations of Canada shared the objective of ensuring that Governments fulfilled their obligations to protect the interests of children and, where the violation of rights resulted in disability, to provide the necessary compensation. Both organizations were particularly concerned by the harmful effects of the use of drugs (licensed by Governments), some of which had led to severe or disabling results in children. A particularly striking example was the drug thalidomide, which had been the cause of severe deformities in children born of mothers who had taken the drug during pregnancy. For many of those unfortunate children and their families, long years of legal action against the drug manufacturers had proved necessary to gain any form of monetary settlement, and in many cases settlement had been most inadequate having regard to the considerable suffering and difficulties resulting from the disability of the victim.

74. Some Governments, notably the Federal Republic of Germany and Japan, had recognized their legal and moral responsibilities and had contributed sizeable amounts of money to trust funds established for their own thalidomide victims, but that was not true of many other Governments which had failed to provide adequate compensation for their victims, some of whom were now facing severe problems.

75. The International Commission of Health Professionals held the view that, as a matter of general principle, Governments had to bear the responsibility for any new drug and, where such a drug proved to be dangerous, had to ensure adequate compensation and rehabilitation.

76. It was interesting to note that the Canadian Government in power at the time of the thalidomide scandal had indicated its acceptance of at least partial responsibility for having licensed the drug. However, following many years of attempted negotiations, the Canadian thalidomide victims had had to file a communication through the Human Rights Committee pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights in order to obtain compensation. It was encouraging to note that the Canadian Government had recently indicated its readiness to consider the claims for financial assistance of the thalidomide victims with the objective of arriving at a mutually satisfactory settlement. Furthermore, on 13 February 1990, it had made a formal financial proposal to the thalidomide victims which was currently being reviewed by their representatives.

77. It was the view of the two organizations he represented that the Commission on Human Rights should ensure as a matter of general principle that States recognized their obligations towards children damaged by drugs licensed by them. They had already emphasized at the forty-first session of the Sub-Commission that the Special Rapporteur appointed to review the question of the right to compensation of victims of human rights violations should pay special attention to the rights of children, who deserved special protection.

78. Mr. MOSES (Grand Council of the Crees), speaking also on behalf of the International Organization of Indigenous Resources Development and of the South American Indian Council, said that recent changes in national and international affairs demonstrated the political will of States and the intense desire of peoples to establish democracy and ensure that the principle of self-determination was applied. The indigenous peoples had followed those events in a state of hope tinged with envy. The changes in southern Africa had raised the greatest hopes in the indigenous peoples, since the situation there most clearly reflected the conditions of indigenous people elsewhere in the world, particularly in the Americas, where their right to self-determination had never been respected, and their right to ownership of their land and its resources was still contested.

79. Some States continued to question the identity of indigenous peoples as peoples within the meaning of the international human rights instruments, which was symptomatic of the prejudice and discrimination against indigenous persons. Canada, for example, which used the term "aboriginal peoples" several times in its own constitution, had been more concerned with the effect of using the term "peoples" than with the appropriateness of the term, which was a strange approach to international law. The Commission on Human Rights and the United Nations should try to ensure that they did not follow the same path, and end by practising a particular form of discrimination. That would indeed be unacceptable for an organization responsible, among other things, for the elimination of discrimination. The indigenous peoples therefore hoped that justice and respect for the principle of equality and self-determination would soon prevail.

80. As the world was preparing to "celebrate" the conquest of the Americas, the international community might be persuaded to recognize the injustices which the indigenous peoples had barely managed to survive. An appropriate end to the 500 years of plundering would first of all be to adopt a universal declaration on indigenous rights, and then to begin the work of implementing international standards to eliminate the gross violations of indigenous rights.

81. Like the other organizations it represented, the Grand Council of Crees endorsed the draft resolution in which the Sub-Commission requested that the mandate of Mrs. Daes, Chairman/Rapporteur of the Working Group on Indigenous Populations, should be extended. The draft universal declaration on indigenous rights, which already dealt with essential indigenous issues, should also contain provisions on the crucial issue of the relationship between the right to development, indigenous rights and environmental protection, because most indigenous human rights violations occurred in connection with irresponsible development and environmental degradation.

82. In that connection, the report on the United Nations Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States (E/CN.4/1989/22) and the

report on the Global Consultation (E/CN.4/1990/9 [part III]) contained recommendations which should be reflected in the draft declaration. The Grand Council of the Crees looked forward to the world environment conference to be held in 1992, with the expectation that States would take the opportunity to recognize the contribution which indigenous peoples could make to rationalizing environment and development. The indigenous peoples' organizations were willing to assist the work of that conference.

83. Finally, the question of indigenous rights should be given its own place on the agenda of the Commission, since the issues involved transcended the mandate of the Sub-Commission. Those problems concerned development, environment, economic, social and cultural rights, the administration of justice and self-determination, all of which fell within the purview of the Commission.

84. Mr. KERKINOS (Observer for Greece), exercising his right of reply, expressed surprise at hearing the Yugoslav delegation include Greece in the list of countries in which Yugoslav minorities resided. There was no Yugoslav minority in Greece.

85. The Greek delegation wished to restate that categorically, since the Yugoslav delegation persisted in its claim, which it had already made before the Third Committee of the General Assembly at its previous session. Any inference by the Yugoslav Federal Government that there was a Yugoslav minority in Greece had no locus standi historically, legally or otherwise.

86. Yugoslavia and Greece had long-standing bonds of friendship and on more than one occasion they had struggled together to assert themselves as nations. The Greek delegation was therefore taken aback by a statement which ran counter to the spirit of co-operation and good-neighbourliness that Greece had cultivated in the Balkans. Those allegations might have been motivated by domestic considerations but that was insufficient justification for Yugoslavia to jeopardize its relations with Greece. Such assertions marred relations between States and were not conducive to the new climate of confidence which was emerging in Europe and which was paving the way for a new age of understanding and co-operation not only in Europe but throughout the world.

87. Ms. GRAF (International League for the Rights and Liberation of Peoples), speaking also on behalf of a number of other non-governmental organizations - Habitat International Coalition, Human Rights Advocates, International Association of Educators for World Peace, International Association against Torture, International Commission of Health Professionals, Liberation, Minority Rights Group, and Pax Christi International - recalled that during the debate in the Sub-Commission on human rights in Iraq, several experts and non-governmental organizations had said that no precise modalities had been established for the visit to Iraq by the experts. During the current session of the Commission, the Iraqi Government had renewed its invitation to the members of the Sub-Commission, at the same time stating that the displacement of Kurds was justified for reasons of national security. However, the Iraqi delegation had made no reference to three major violations of human rights: the disappearance of opponents of the Government, summary executions as established by the Special Rapporteur on that question, and the mistreatment of children as illustrated in a recent report by Amnesty International.

88. All reliable information available confirmed that human rights were systematically violated in Iraq; the use of chemical weapons against civilians, killings, imprisonment and torture of political opponents, and enforced displacement of Kurds and other opposition groups. On the subject of displacements, the Minority Rights Group had published a report showing that, contrary to the statement by the Iraqi delegation, the Kurds had not been displaced "close by" but sent to camps far away from the Kurdish mountains, with the serious and lasting social and cultural consequences which the Commission could not fail to recognize.

89. It was all the more important, therefore, for the Commission to address the issue of human rights in Iraq given that there had been no improvement in the human rights situation there since the forty-first session of the Sub-Commission in August 1989. It was imperative that the Commission should determine precisely the nature of the invitation issued by Iraq and the modalities of the visit by the Sub-Commission's experts. While welcoming the initiative on the part of the Iraqi Government, the non-governmental organizations still had many doubts about Iraq's preparedness to respect human rights and noted in particular that there had still been reports of executions of political opponents subsequent to the amnesties mentioned in Iraq's report. It was therefore essential that the Iraqi Government's promised collaboration with the Sub-Commission's experts should be as complete as possible.

90. The international community had recently adopted the Convention on the Rights of the Child, yet many children were still being born in Iraqi prisons where their mothers were being held because of their opposition to the existing régime. Many other children were still being deported to camps outside Iraq, for example in Turkey and Iran, where they were denied their full social and cultural rights.

91. Members of the Commission on Human Rights had reiterated their concerns about the human rights situation in Iraq at the current session, but without putting forward any concrete proposals. It was the Commission's duty forcefully to denounce violations of human rights wherever they occurred, and the Commission would disappoint many non-governmental organizations and especially the victims themselves if it kept quiet about such a situation. The non-governmental organizations for which the International League was speaking urged that the systematic violations of human rights in Iraq, especially against the Kurdish people, should be recognized and that the modalities of the visit to Iraq by the Sub-Commission's experts should be openly discussed and approved by all the members of the Commission. Furthermore, a detailed report on the mission should be published. Only in that way would the experts' visit to Iraq have the necessary validity and the Commission have fully discharged its duty.

The meeting rose at 6 p.m.